In the High Court of Judicature at Madras

Dated 10.12.2004

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The Honourable Mr. Justice P.SATHASIVAM
and
The Honourable Mr.Justice AR.RAMALINGAM

Civil Miscellaneous Appeal No.746 of 1997

1. M.Ganeshmoorthy
2. The Branch Manager,
   New India Assurance Company
   Limited, Karaikkal. ..Appellant/Respondents.

..vs..

S.Kaliaperumal ..Respondent/Petitioners.

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, against the judgment and decrees dated 17.03.1997 in MCOP.No.8 of 1996 on the file of Motor Accidents Claims Tribunal, Pondicherry at Karaikal.

For Appellants : Mr.S.Jayasankar

For Respondent : Mr.R.Vasudevan
for Mr.T.Susindran.

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.,)

The owner and insurer of the vehicle in question are the appellants in this appeal.

2. In respect of grievous injuries sustained in a motor vehicle accident that took place on 04.12.1994, the respondent herein / claimant prayed for a compensation of Rs.3 lakhs. Before the Tribunal, the injured claimant was examined as P.W.1 and Dr.T.Veeramuthu as P.W.2, besides marking Exs.A-1 to A-15 and on the side of the owner and insurer, no oral and documentary evidence was let in, in support of their defence. The Tribunal, after holding that the accident was caused due to the negligence of the driver of the vehicle in question, passed an award for Rs.1,41,000/= with interest at 12% per annum from the date of petition till date of

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deposit. Aggrieved by the same, the present appeal has been filed.

3. Heard the learned counsel for the appellants as well as the respondent.

4. After taking us through the award of the Tribunal, the learned counsel appearing for the appellants would submit that, inasmuch as the permanent disability, even according to the doctor, is 41%, grant of Rs.1,08,000/= under the head 'permanent disability' is excessive and not warranted. On going through the evidence of P.Ws.1 and 2 and other documents, namely, Exs.A-5 to A-15 as well as his profession, namely, fisherman, we are unable to accept the said contention for the following reasons.

5. It is not in dispute that the claimant is a fisherman by profession. It is seen from the evidence of P.W.1 that due to the accident, he sustained multiple injuries and fracture on the left leg. Immediately after the accident, he was taken to Government Hospital, Karaikal and taken treatment as in-patient between 04.12.1994 and 23.12.1994. Accident Register, which has been marked as Ex.A-5, supports the above version. Ex.A-6 is the discharge slip. It is further seen that, since the injured claimant had continuous pain even after discharge from the hospital at Karaikal, he was again admitted in the same hospital and he was there between 25.06.1995 and 30.06.1995. Ex.A-11 is the slip proves the above version. It is further seen that even after discharge from the Government Hospital, Karaikal, the injured had treatment at Jipmer Hospital, Pondicherry in the month of August 1995. Ex.A-7, identity card also proves the above version.

6. It is the case of P.W.1 that, thereafter he had further treatment from Government Hospital, Pondicherry between 16.09.1995 and 14.10.1995, again between 13.05.1996 and 04.06.1996. Exs.A-9 and A-10 prove the same. It is further seen from the evidence of the claimant that he had treatment from Primary Health Centre, Karaikalmedu in between 10.07.1996 and 17.07.1996. Apart from the narration of nature of injuries and period of treatment by P.W.1, Dr.T.Veeramuthu, who assessed his disability, was examined as P.W.2. In his evidence, P.W.2 has stated that he is a Orthopedic Surgeon and he verified the medical reports of the Government Hospital, Karaikal, where the claimant had treatment, and after examining him, he assessed his disability to the extent of 41%, which according to him, due to the fracture of left leg bone. Disability Certificate has been marked as Ex.A-13.

7. It is the evidence of P.W.1 that as a fisherman, he was earning Rs.150/= per day. In order to prove that he is a fisherman by profession, he marked Ex.A-14, which is a certificate issued by Karaikal Fishermen Cooperative Society. Though the Tribunal has not accepted his entire version regarding his income, taking note of the

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fact that he is a fisherman by profession and it would be possible for him to earn at least Rs.50/= per day, fixed his monthly income at Rs.1,500/=. Taking note of the period of treatment at various stages, the Tribunal has granted Rs.18,000/= towards loss of income for the period of 12 months. We already referred to the details regarding treatment as in-patient, supported by discharge slip issued by the respective hospitals. Hence, the grant of Rs.18,000/= is reasonable and acceptable. The Tribunal has also granted Rs.10,000/= towards extra nourishment and Rs.5,000/= towards transport charges. Considering the length of period of treatment and the fracture, we accept both the amounts as reasonable.

8. The learned counsel for the appellants, as stated earlier, disputed the amount of Rs.1,08,000/= granted towards permanent disability. In this regard, the learned counsel for the respondent / claimant would submit that in the light of disability to the extent of 41% and the evidence of P.W.1 and the doctor P.W.2, it would not be possible for him to earn the same amount as he was getting prior to the accident. It is relevant to point out the evidence of P.W.2. In his evidence, he has stated that

> "On 01.02.1996 I issued a Physically Handicapped Certificate. Total percentage of permanent disability was 41%. During treatment, there was non-union of left arm bone. For it, surgery was done at Government Hospital, Pondicherry. After the injury, it is very difficult for the petitioner to lift heavy articles like Kattamaram and net. It will not be possible for the petitioner to row the Kattamaram when he goes for fishing...".

The above evidence amply shows that it would be difficult for the claimant to operate or lift heavy articles, like Kattamaram and without which, he cannot do fishing. If we consider these aspects, we are of the view that the grant of Rs.1,08,000/=, though under the head of permanent disability, cannot be said to be either excessive or unreasonable. As rightly pointed out by the learned counsel appearing for the respondent, the Tribunal has not granted any amount towards pain and suffering, mental agony, etc,. Taking note of all these aspects together, we are of the view that the amount awarded by the Tribunal is just and reasonable and there is no valid ground for reduction as claimed by the appellants.

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9. Accordingly, the appeal fails and the same is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Motor Accidents Claims Tribunal,
   Pondicherry at Karaikal.

2. The Record Keeper,
   V.R.Section,
   High Court, Madras.

+ 1 CC to Mr.T.Susindran, Advocate SR NO 54564

+ 1 CC to Mr.S.Jayasankar, Advocate SR NO 54711

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